REMARKS

Claims 1 through 3 are pending in this Application. The specification has been amended to address manifest clerical oversights, and claim 1 has been amended. Care been exercised to avoid the introduction of new matter. Indeed, adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, Fig. 1 and the related discussion thereof in the written description of the specification, noting blowing means 114 positioned in an air circulation path between gas cooler 154 and evaporator 157. Applicants submit that the present Amendment does not generate any new matter issue.

Claim 1 was rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Giovanni.

In the statement of the rejection the Examiner asserted that Giovanni discloses a drier corresponding to that claimed comprising, *inter alia*, compressor 11, gas cooler 12, pressure reducing device 13, evaporator 14 and blowing means 15. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc., 329 F.3d 1358 (Fed. Cir. 2003;); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* There is a fundamental and significant difference between the claimed drier and Giovanni's drier that scotches the factual determination that Giovanni discloses a drier identically corresponding to that claimed.

Specifically, the claimed drier is structured so that the blowing means is positioned in an air circulation path between the gas cooler and evaporator. Not so in Giovanni's drier, wherein the blowing means 15 is **not,** repeat **not,** positioned between gas cooler 12 and evaporator 14, as **clearly shown** in Fig. 1.

The above argued fundamental structural difference between the claimed drier and Giovanni's drier undermines the factual determination that Giovanni discloses a drier identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).* Applicants, therefore, submit that the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Giovanni is not factually viable and, hence, solicits withdrawal thereof.

Claims 2 and 3 were rejected under 35 U.S.C. § 103 for obviousness predicated upon Giovanni in view of Ebara.

This rejection is traversed. Claims 2 and 3 depend from independent claim 1. Applicants incorporate hearing the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Giovanni. Specifically, Giovanni neither discloses nor suggest a drier wherein the blowing means is positioned between the gas cooler and the evaporator, as in the claimed invention. The Examiner asserted that Ebara discloses a carbon dioxide refrigerant and flexible duct member. The Examiner concluded that one having ordinary skill in the art would been motivated to modify Giovanni's drier by incorporating such features from Ebara. However, Ebara does not cure the above argued deficiency of Giovanni. Accordingly, even if the applied references are combined as suggested

by the Examiner, and Applicants do not agree that the requisite fact-based motivation has been established, the claimed invention would not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).*

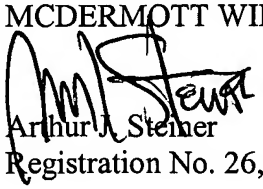
Applicants, therefore, submit that the imposed rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Giovanni in view of Ebara does not factually or legally viable, and hence, solicit withdrawal thereof.

It should, therefore, be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP



Arthur J. Steiner
Registration No. 26,106

600 13th Street, N.W.
Washington, DC 20005-3096
202.756.8000 AJS:btl/bjs/ntb
Facsimile: 202.756.8087
Date: September 14, 2004